IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8534 OF 2007

Shri Dagdu Bhaguji Padwal
(since deceased)through his
legal heirs ...Petitioners

Versus

Shri Dattatraya Dagdu Chaskar
(since deceased)through his
legal heirs ....Respondents

CORAM: S.C.DHARMADHIKARI, J.

26.11.2007

P.C. :

1. The only ground on which the order of the executing court rejecting the objections to the enforceability and executability of the decree is that the same is a nullity because it is contrary and defeats the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the U.L.C.Act).

2. It is not necessary to refer to the facts and

circumstances leading to the above objection in details inasmuch as the impugned order is passed on an application Exhibit 283 which was before the executing court and directed to be heard alongwith Exhibit 288 in Special Darkhast No.278 of 1993. The directions to hear and decide these objections arose from an order passed by this court in a Writ Petition by the Decree Holder being Writ Petition No. 6723 of 2006. The order dated 31.8.2007 insofar as it is relevant for the purpose of the present petition reads thus :

> "6. The impugned order is therefore liable to be set aside and it is accordingly quashed and set aside. The Executing court shall decide the application at Exhibit-283 afresh on merits and in accordance with law after taking into consideration the objections raised by the respondents herein as expeditiously as possible and, in any case, within a period of two months. Writ Petition is made absolute in the above terms. "

3. Accordingly, Exhibit-283 has been heard afresh and by the impugned order all objections of the petitioners before me have been rejected. I need not go into the other objections as Mr.Shah appearing for the petitioner has confined the objection with regard to the decree being nullity on the ground that it contravenes the provisions of the U.L.C.Act. In this

behalf, he has invited my attention to Section 5, 6, 8, 10, 27 and 42 of the U.L.C.Act and contended that the present decree is in a suit for specific performance of An agreement for sale of an Immovable property. However, a statement was submitted by the deceased under Section 6(1) of the U.L.C.R.Act on 13.8.1976 and the competent authority was pleased to declare surplus vacant land to the extent of 98,136.70 sq.mts. However the decree is passed in respect of the property/portion thereof on 14.6.1983 in the subject Special Civil Suit No. 176 of 1980. The contention is that the decree is passed on 30.9.1983 i.e. after the declaration and therefore such a decree is clearly a nullity. He submits that the property described in para 1 of the plaint excluding 1000 sq.mts stood vested in the State of Maharashtra by virtue of the order of the Competent Authority and hence the decree is inexecutable in law, being complete nullity. Mr.Shah however does not dispute that the suit was maintainable and a decree can be passed for specific performance of an agreement for sale which is subject matter of the suit. However the decree would be subject to the provisions of the U.L.C.Act. If there is no compliance, then the decree

even if passed is a nullity is the submission.

4. In this behalf what is relevant to note is that such an objection was raised earlier by the very same petitioners. That objection was raised by filing an application which was numbered as Application (Exhibit 223). By a reasoned order the application preferred by the petitioners, who are the legal representatives of the Defendant Judgment debtor, came to be rejected by the Trial Court by an order passed on 16.4.1999. A Revision Application being Civil Revision Application No. 878 of 1999 was preferred challenging this order which also was rejected on 13.8.1999 by a reasoned order by a Learned Single Judge of this court.

5. That order was challenged in Special Leave Petition before the Supreme Court of India which was numbered as Special Leave Petition No. 589 of 2000. That petition was dismissed by the Supreme court on 11.2.2000.

6. Though this court directed that the present set of objections, raised vide Exhibit 283, were to be

heard afresh by the executing court and an order made thereon, it cannot be lost sight that these directions were issued in a Writ Petition preferred by the decree holder. That decree holder had preferred a writ petition before this court because consequential relief which ought to have followed did not follow. In other words, the decree being silent with regard to possession, there cannot be any question of delivery of possession being directed was the view taken by the Executing court. The executing court refused to issue a direction regarding possession and the decree holder was aggrieved by that course of action. As rightly pointed out by Mr.Thorat, the decree holder could not enjoy the fruits of the decree after such an objection being raised by the judgment debtor and the same being upheld, although Sale-Deed was executed in favour of the decree holder. After all objections were rejected right upto the supreme court, still, physical possession of the property could not be taken by him. A suit was also filed by the judgment debtors, in which, an application was made for interim injunction to restrain the petitioners from enjoying the fruits of the decree. This application was rejected and an

Appeal therefrom was also rejected. Thus, Mr.Thorat submits that merely because this court directed that the objection must be gone into afresh does not mean that untanable objections and which do not deserve to be considered again should be allowed to be raised and considered afresh. Even otherwise, if the objections themselves cannot be raised then they could not have been considered.

7. It is not necessary to go into the larger controversy, as to when this court directed hearing of the application Exhibit 283 afresh, that is a direction to consider the merits of the objections with regard to the decree being a nullity on the ground that U.L.C.Act not being complied with. Even if that plea was raised by the Judgment Debtors, in the facts of this case Executing court was not obliged by this court's direction to go into it on mer its and it could have rejected the same for the reasons assigned by it in the instant order.

8. That apart, it is not as if the petitioners were not permitted to raise the above objection. Tht

is not the grievance either. However, the reasons assigned for rejecting the same are assailed before me.

9. To my mind, the executing court has rejected these objections by assigning cogent reasons in para 5 of the order. It has referred to the settled principles in para 6 of the same. To my mind, allowing such an objection to be raised once again would be contravening the principles of Finality of orders and public policy. In the peculiar facts of the present case when such an objection was raised and gone into earlier, interest of justice demands that the same is turned down. The decree is not rendered a nullity merely because in the submission of the judgment debtors it has been passed erroneously. That distinction has always been maintained in law. In such circumstances, even otherwise I do not find that the decree passed in the present case can be said to be a nullity.

10. A faint attempt was made to raise the objection with regard to the application for possession being barred by limitation. That objection has been

duly noted and considered in para 8 of the impugned order.

11. Considering that this court has held that all attempts of the legal heirs of the judgment debtor are to somehow stall execution and enforceability of a decree passed against their predecessor in title way back in the year 1983, this is not a fit case for exercising the equitable, discretionary and extra ordinary jurisdiction under Article 227 of the Constitution of India. Petition is therefore dismissed.

12. At this stage, Mr.Shah requests that the possession warrant being issued by the executing court, its execution and enforceability be stayed for a reasonable period so as to enable the judgment debtors/heirs to challenge the present order. The request is opposed by Mr.Thorat, Learned Senior Counsel appearing for the decree holder. However, in the interest of justice for a period of two weeks from today the warrant for possession, if already issued shall not be enforced. Petition dismissed. No costs.

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